

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 92-07207 IN THE NAME) **FINAL ORDER**
OF LOIS JEAN HENNING DOTSON)
_____)

On July 2, 1998, the hearing officer for the Idaho Department of Water Resources ("Department") issued a Recommended Order in connection with the above captioned matter. None of the parties filed a petition for reconsideration, briefs or exceptions in connection with the Recommended Order. Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On April 8, 1994, Lois Jean Henning Dotson and/or Evans Dotson ("Applicants") filed Application for Permit No. 92-07207 ("application") with the Department proposing the diversion of 9.8 cubic feet per second ("cfs") of water from Renfro Creek, a tributary to the St. Maries River, and to store 10 acre feet of water. Proposed uses of water are recreation, irrigation of 140 acres, power and mining. The point of diversion is proposed within the NE1/4SW1/4 section 14, T44N, R1W, B.M., Benewah County, Idaho.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On December 24, 1997, the Applicants amended the application as follows:

- The acreage to be irrigated was reduced from 140 acres to 35 acres.
- The location of the points of diversion are all proposed within the SESE Section 15, T44N, R1W, B.M.
- Additional sources of water proposed to be appropriated are a Spring tributary to Renfro Creek and an Unnamed Stream tributary to Renfro Creek.
- The rate of diversion was reduced from 9.8 cfs to 4.7 cfs.

2. The Department published notice of the application which was subsequently protested by Joan M. Henning Baune, Ruth A. Henning Hoyt and the Idaho Department of Fish and Game ("Protestants").

3. On June 19, 1998, the Department conducted a hearing in the matter. The Applicants were present and represented themselves. Protestant Fish and Game was represented by Chip Corsi. Joan Baune was present and represented herself. Michael Hoyt appeared on behalf of Ruth A. Hoyt.

4. Exhibits offered and accepted as a part of the record include the following:

- a. Applicant's Exhibit 1 - Schematic of proposed water bypass for power purposes together with photographs.
- b. Protestant's Exhibit A - Job Completion Report, F-73-R-10, dated 1987 by C. Michael Falter.

5. The Applicants propose the diversion of 4.0 cfs of water from Renfro Creek for power purposes and 0.7 cfs for irrigation. The proposed diversion works for power purposes is a concrete structure approximately 16 feet wide and 2.5 feet high with a downstream apron to prevent scouring. A fish ladder approximately 1 foot wide and 1 foot high is proposed. The diversion structure would divert water into a 10 inch diameter PVC pipe for approximately 1000 feet to the powerplant where it would be discharged to a ditch about 300 feet long which would return the water to Renfro Creek. The diversion intake would be screened with 1/4 inch mesh to prevent fish from entering the pipeline.

6. The Applicants stated that their water use will not take more than 1/3 of the flow of Renfro Creek.

7. Protestant Fish and Game estimated the flow of Renfro Creek as about 10 cfs in May 1994. The Applicants estimated the flow of Renfro Creek to be about 12 cfs in June 1994 using a "float" method to determine stream velocity.

8. The Applicants do not plan a storage dam as proposed on the application. The Applicants indicated that they may construct a small diversion dam not more than three (3) feet in height in connection with the proposed irrigation.

9. The Applicants estimate the cost of the project to be from \$5,000 to \$8,000 and stated that they have the funds to complete the project.

10. Renfro Creek contains a population of west slope cutthroat trout and rainbow trout.

11. Protestant Fish and Game was concerned that without review of specific plans of the power diversion structure, including the fish ladder, that the design of the fish ladder may not be sufficient to attract migrating fish.

12. The Applicants stated that they do not intend to use the water for mining and recreation purposes as shown on the application.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The Department should not approve the proposed mining and recreation uses and should not authorize storage of water.

3. Use of water, as approved, will not reduce the quantity of water under existing water rights.

4. The water supply itself is generally sufficient for the purposes intended.

5. The application, as approved, is made in good faith and not for delay or speculative purposes.

6. The Applicant has sufficient financial resources with which to complete the project.

7. The application, as approved, does not conflict with the local public interest if the application is appropriately conditioned.

8. The application is not contrary to the conservation of water resources within Idaho.

9. The Department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Permit No. 92-07207 in the name of Lois Jean Dotson and Evans Dotson is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights. Water shall not be diverted under this right for irrigation purposes when flows in the St. Maries River are below established minimum stream flows.
2. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **August 1, 2001**.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The right holder shall submit plans of all diversion works, the fish ladder and diversion intake associated with power

production to the Department for review and approval prior to actual construction of the works.

5. The right holder is not entitled to divert more than one-third (1/3) of the flow of Renfro Creek for power purposes or 4.0 cfs whichever is smaller.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 acre feet per acre annually at the field headgate for irrigation of the Applicant's 35 acres.
7. The water right acquired under this right for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
8. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
9. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
10. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the power generation intake, or shall otherwise provide a means to determine the amount of water being diverted, as determined to be acceptable by the Department. After specific notification by the Department, the right holder shall annually report the amount of water diverted to the department.
11. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

12. The Director retains jurisdiction of this right in order to limit the use of water for hydropower generation purposes to a specific term of years as required by Section 42-203B(7), Idaho Code.
13. The issuance of this right does not grant right-of-way or easement across the land of another.
14. Mining and recreation uses are not authorized uses under this approval.

Signed this 4th day of August, 1998.



KARL J. DREHER
Director

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 92-07207

Proposed Priority: March 8, 1994 Maximum Diversion Rate: 4.70 CFS

This is to certify, that LOIS JEAN HENNING DOTSON
PO BOX 223
CATALDO ID 83810-0223

has applied for a permit to appropriate water from:

RENFRO CREEK	tributary of	ST. MARIES RIVER
SPRING	tributary of	RENFRO CREEK
UNNAMED STREAM	tributary of	RENFRO CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/15 to 11/15	0.70 CFS
POWER	01/01 to 12/31	4.00 CFS
	Totals	4.70 CFS

LOCATION OF POINT(S) OF DIVERSION: SESE , Sec. 15, Township 44N, Range 01W
BENEWAH County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
44N	01W	15	SESE	35.0		35.0

Total number of acres irrigated: 35.0

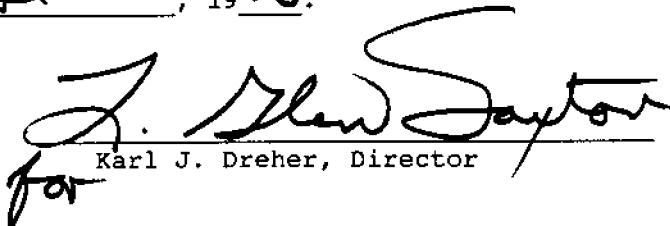
PLACE OF USE: POWER, same as IRRIGATION use

CONDITIONS OF APPROVAL AND REMARKS

1. See Final Order for conditions and limitations for use of water under this approval.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the signature of the Director, affixed at Boise, this

4th day of August, 1998.


for Karl J. Dreher, Director

CERTIFICATE OF SERVICE


I DO HEREBY CERTIFY that on the 6TH day of August, 1998, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

LOIS JEAN HENNING DOTSON
PO BOX 223
CATALDO ID 83810

RUTH A HENNING HOYT
PO BOX 271
GREEN NY 13778

JOAN M HENNING BAUNE
E 515 FRISBIE WAY
ROCKFORD WA 99030

IDAHO DEPT OF FISH AND GAME
2750 KATHLEEN AVE
COEUR D ALENE ID 83814


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau